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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,522	01/27/2005	Pia Luisa De Gaudenzi	AP047-05	1460

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EXAMINER

GRILES, BETHANY L

ART UNIT	PAPER NUMBER
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3643

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/522,522	Applicant(s) DE GAUDENZI, PIA LUISA	
	Examiner Bethany L. Griles	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-17, 19-21, 23-27 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-17, 19-21, 23-27 and 29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 12/22/06 have been fully considered but they are not persuasive. Examiner still believes that the Schiller reference anticipates the claims of the immediate specification. Applicant has argued that the shape of the back face is of import—but has failed to give criticality to the particular shape disclosed. The fact that Schiller does not disclose three curves does not place the case in condition for allowance. As Examiner has stated previously, changing the shape of an already disclosed structure does not impart patentability. Likewise, the amendments to the claims do not place the case in condition for allowance, as they fail to define over the Schiller reference as modified.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-17 and 19 and claims 20-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiller et al US5035205.

Regarding claims 13, 20, 21, and 27, Schiller et al. disclose a disposable toilet box for cats comprising a rectangular box (figure 1) with a bottom and four vertical faces; wherein the back face 12 is longer than the side faces 22a, 22b such that the

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back face 12 is adapted to form the cover of the box (col 3, line 34); wherein the side faces and frontal face 22a, 22b comprise an outcoming ply at the same height dividing the side faces and frontal face in a upper part 22a, 22b and lower part 16a, 18a; characterized in that the top edge of the back face 12 has a shape 13 adapted for fixing the cover 12 when it is closed; oblique plies are provided in the upper part of the side faces 22a, 22b respectively, starting from the meeting point of the respective horizontal ply with the back face of the box; and oblique plies 16b are provided in the upper part of the frontal face at the meeting point of the horizontal ply with the side face 16a, 18a.

Schiller et al. do not disclose the back of the box is formed of three curves; of which two are sharp curves at the corners and a lower plane curve in the middle to resemble the shape of a cat's head.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of the back face, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

Regarding claim 14, Schiller et al. disclose that the bottom comprises four flaps 20b, 21a, 20a, 21b, the two larger flaps covering the whole bottom and the two smaller flaps foldable between the larger flaps covering together the bottom surface (col 3, lines 13-16).

Regarding claims 15, 17, 24, 26, 29, and 31 Schiller et al. disclose the box is made of carton (cardboard), which is biodegradable (col 3, line 7).

Regarding claims 16, 25, 30 Schiller et al. disclose the box is self-standing (see figure 4 and col 3, lines 49-52).

Regarding claim 19, Schiller et al. disclose the box can be filled with hygienic litter (col 1, lines 61-64).

Regarding claim 23 Schiller et als disclose the oblique ply in 22a, 22b of the frontal face is adapted to receive the brow (unnumbered) thereby securing the back face in a closed position, and the frontal face is resistant against opposition of the cover (col 4, lines 4-10).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is

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571.272.6888. The examiner can normally be reached on Tuesday and Thursday, 5.30 am-2.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Blg

Bethany L. Griles
Examiner
Art Unit 3643



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600